From: Justin Michael Palk
To: Microsoft ATR
Date: 12/9/01 6:45pm
Subject: Microsoft Settlement

To Whom It May Concern,

I am writing to you in regards to the proposed settlement in the Microsoft anti-trust case. As a computer professional, I am gravely concerned about the apparent leniency of the settlement currently under consideration. While I in theory support the idea of a speedy remedy, I do not believe that in any instance a speedy remedy should take the place of an effective and reasonable remedy, the current settlement appears to assign primacy to the former at the expense of the latter.

The overall structure of the settlement leaves something to be desired, as it leaves Microsoft's fundamental course of operation untouched, and generally seems to have no concrete method of enforcement, as the Technical Council (TC) only has the power to suggest remedies in the event of a breach of the settlement (IV D 4 c). Similarly, the restriction against members of the TC and their findings, recommendations and other products being admitted in court in any matter regarding the settlement is another curious limitation on the strength of the proposed remedy. Microsoft has demonstrated its willingness to violate agreements with the government in the past (indeed, just such a violation led to the prosecution of this case), and there has been no indication that it has changed its underlying opinion to such agreements. Without a stronger set of enforcement provisions, I fear that Microsoft will regard this settlement with the same disdain it has had for similar agreements in the past.

Another flaw in the settlement is the lack of consideration given to open source, and 'free' software. There are sections which require Microsoft to provide information to commercial competitors, but non-commercial ventures are specifically exempted from these requirements. (III J 2 c) gives Microsoft the ability to define the 'reasonable, objective standards... for certifying the authenticity and viability of its business', when deciding who is allowed to request information regarding APIs, communications protocols and documentation. Open source software, such as the Apache web server, and Sendmail (the most widely used web server and mail transport software on the internet, respectively), clearly compete with Microsoft products, but, as they are not commercial products, their authors have no right to request information from Microsoft. Similarly, SAMBA, a widely used software package for allowing Windows-based file servers and printers to work with UNIX and other systems, and requires information on Microsoft communications protocols, will effectively have its death warrant signed should this settlement come into effect.

Microsoft itself has recognized that various open source projects are the greatest threat to its continuing dominance of the software market (as shown by the 'Halloween Documents' http://www.opensource.org/halloween/halloween1.html). They have also

demonstrated their contempt for government attempts to break their stranglehold on the market. It is my opinion that this proposed settlement will do little to curb Microsoft's predatory and illegal behavior in the commercial sector, while simultaneously strengthening their hand against what is currently the greatest threat to their monopoly. I urge you to reconsider and rework this settlement into an effective remedy that will free the market and provide a tangible benefit to consumers.

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